

Addendum to the INITIAL STATEMENT OF REASONS (ISOR)

Additional Public Comment Period: December 23, 2022, to January 9, 2023.

Previous Public Comment Period: November 4 to December 20, 2022.

California Code of Regulations TITLE 19. Public Safety DIVISION 1. State Fire Marshal

Chapter 5. Automatic Fire Extinguishing Systems

Article 5. Licensing

Section 905.3. Fees

and the

Chapter 5.5. Automatic Fire Extinguishing Systems Certification

Article 3. General Provisions and Fee Schedule

Section 925.1. Fee Schedule

This addendum includes sufficiently related modifications to the Express Terms (TEXT). The modifications would remove fee increases from the Section 925.1 fee schedule, while retaining the service fee for a returned check.

Statutory Authority to collect fees for administration of the Automatic Extinguishing Systems Program (AES Program).

Pursuant to Health and Safety Code Sections 13110, 13195, 13195.5, 13196, 13196.5, 13197, 13197.5, 13197.6, 13198, 13198.5, and 13199, the Office of the State Fire Marshal (OSFM) has statutory authority to operate the Automatic Extinguishing Systems Program, also known as the AES Program, and to collect fees which do not exceed the actual costs of operating the program.

Health and Safety Code Section 13137 governs the use of the State Fire Marshal Licensing and Certification Fund. This fund houses fees from the Automatic Extinguishing Systems Program, and fees from the OSFM's other Licensing and Certification programs. Section 13137 specifies that 1) fees may not exceed the actual cost of administering the OSFM's Licensing and Certification programs, and 2) fees must be used for the benefit of the same group they are collected from.

In addition, Government Code Section 6157(b) authorizes a State agency to charge an appropriate fee to cover the cost of any returned or dishonored checks. This section is applicable to the Automatic Extinguishing Systems Program because the program accepts checks for fees.

The fees assessed by the Automatic Extinguishing Systems Program support compliance with statutory and regulatory requirements which protect life and property against fire and panic, enhancing public safety and worker safety.

PROBLEM, BENEFITS, and RATIONALE

1. Problem being addressed: The current fee amounts collected from the regulated community are deposited in the State Fire Marshal Licensing and Certification Fund. The fund's statute limits the use of monies to the group that the fees are collected from. However, the current fee amounts are not sufficient to cover the actual costs to operate the Automatic Extinguishing Systems Program, and the program does not currently have additional fiscal options. There is substantial evidence that the program must obtain additional revenue in order to maintain compliance with the fund's statutory requirements, which effectuate the purpose of Health and Safety Code Section 13137. In addition, the OSFM does not currently have a method to recover the fees from dishonored or returned checks, these regulations would add a fee for that purpose.

2. Anticipated benefits from this regulatory action:

This regulatory proposal would provide a stable and complete funding source for the current operational expenses of the Automatic Extinguishing Systems Program, which will enable the OSFM to retain compliance with the statutory requirements of the State Fire Marshal Licensing and Certification Fund (uniform fund code 0102) and therefore retain use of the Fund. This program implements the statutory enforcement mandates in Health and Safety Code Sections 13110, 13195, 13195.5, 13196, 13196.5, 13197, 13197.5, 13197.6, 13198, 13198.5, and 13199. These fire prevention measures provide a public safety benefit by contributing to the reliable operation of automatic extinguishing systems in structures. In addition, the licensing and training aspect of this program enhances worker safety by creating a consistent and accountable system for sprinkler pipefitters, sprinkler pipefitter apprentices, sprinkler pipefitter trainees, and regulated contractors.

In addition, the proposed regulations would allow the OSFM to recover costs from dishonored and returned checks.

These requirements also support the OSFM's broad public safety mission to foster and promote the protection of life and property against fire and panic.

3. Factual Basis, Rationale:

Individuals, businesses, and systems regulated by the Automatic Extinguishing Systems Program include individuals who install, test, maintain, and service automatic extinguishing systems, including sprinkler pipefitters, sprinkler pipefitter apprentices, sprinkler pipefitter trainees, and regulated contractors. In order to be licensed, individuals must demonstrate both skills and qualifications for these services, and register annually. Automatic Extinguishing systems are required to meet California Building and Fire Code standards, manufacturing and performance standards, and bear the label of an approved testing laboratory. Additionally, all testing, maintenance, and servicing on automatic fire extinguishing systems must be performed by those licensed by the OSFM or the California Contractor's State License Board. Fees are collected from the regulated community through license and registration fees. The fee structure includes a specific cost for each service provided by the program. Fees are deposited in and appropriated from, the State Fire Marshal Licensing and Certification Fund. Fees are currently the only source of revenue for the program.

In 2018, the OSFM initiated the process of fully assessing the operating expenses of the Automatic Extinguishing Systems Program, in order to determine if the existing program revenues meet statutory requirements to use program fees for the benefit of the group they are collected from. Through this evaluation, the OSFM determined that annual revenue under the current fee structure is insufficient to operate the program and therefore does not meet the requirements of Health and Safety Code 13137. Additional revenue is necessary in order for the program to implement the fund's statutory requirements, as detailed in Health and Safety Code Section 13137.

In addition, currently costs from dishonored and returned checks must be absorbed by the program, which is also not consistent with the fund requirements.

The current fee schedule was established and updated over time. The current levels are insufficient to sustain the Automatic Extinguishing Systems Program without incurring a deficit. Since that time, program costs have risen significantly due to inflation, rising personnel costs, amounts required to maintain the reserve recommended by the Department of Finance, and adoption of online electronic systems.

NECESSITY

The proposed regulations are necessary to provide sustainable and complete funding to implement the Program's statutory enforcement mandates in Health and Safety Code Sections 13110, 13195, 13195.5, 13196, 13196.5, 13197, 13197.5, 13197.6, 13198, 13198.5, and 13199. Sustainable and complete funding will allow the OSFM to remain compliant with the State Fire Marshal Licensing and Certification Fund requirements in Health and Safety Code Section 13137.

The proposed fee increases, and additions are consistent with the requirements of Health and Safety Code Section 13137 and Health and Safety Code Section 13127(d) in that the total amount of fees collected are projected to support program costs while not exceeding the actual costs. Over time, revenues from fees and costs for the program may vary due to conditions for the program's regulated entities.

If the revenues for this Program do not meet the statutory fund requirements for the State Fire Marshal Licensing and Certification Fund in Health and Safety Code Section 13137, it may create delays or reductions in services. In addition to impacts to the directly affected entities, this program provides key public safety benefit by supporting fire prevention in structures with automatic extinguishing systems and enhancing worker safety for individuals who work onsite at these locations. This program establishes the minimum standards for the protection of life and property against fire and panic through the reliable installation and maintenance of automatic extinguishing systems.

ECONOMIC IMPACT ANALYSIS AND ASSESSMENT

The proposed regulations will impose cost impacts that a directly affected business would incur in reasonable compliance with the proposed action. There are approximately 2,735 businesses licensed through this program, including Type 1, Type 2, Type L, and C-16 business license holders.

As part of the regulation's development process, draft fee amounts were presented to the

OSFM Automatic Extinguishing Systems Advisory Committee and the State Board of Fire Services for consideration. These stakeholders agreed by consensus that while these amendments to the regulations would increase costs to directly affected industries, the proposed amendments would not fundamentally change their business operations or represent an undue cost burden against the profitability their businesses.

The proposed regulations would also add a new \$30 fee for returned or dishonored checks, which would assign the cost of a returned or dishonored check to the individual rather than the program.

A five-year trend was used to project the average number of license and registrations, resulting in the revenue and expenditures. A fee structure was built based on the overall need to maintain the program operations. Fees were set at the lowest possible amounts, and still provide for full support of the program costs.

The OSFM estimates that 2,735 businesses will be impacted by the increased fees proposed in this regulatory package. The impact will be consistent regardless of the size of any business. An individual would pay an additional \$70 in fees for each new certification application, while a business would pay an additional \$100-265 in fees for each new company application. An individual would pay an additional \$70 in fees each year for renewal, while a business would pay an additional \$100-250 in fees each year for renewal. Fees will be paid by individuals and businesses seeking to become certified or licensed in California.

The projected increase annual revenue is anticipated to be sufficient prevent a deficient in the program. The Department of Finance has recommended that the program provide for a reserve in the case of an unexpected reduction in revenue. This reserve has been included in calculating the operational costs of the program.

The fees are as follows:

Section 905.3. Fees.

License Fees			
<i>Type of License</i>	<i>Type of System</i>	<i>Primary Location, original and renewal</i>	<i>Additional Location, original and renewal</i>
1	Water Based Fire Suppression Systems	\$750.00	\$300.00
2	Engineered and Pre-Engineered Fixed Extinguishing Systems	\$750.00	\$300.00
L	Annual Testing and Maintenance of Wet	\$350.00	\$300.00
	With State Inspection	\$600.00	\$300.00

(b)	Fee for Second and each subsequent	\$300.00	\$300.00
(c)	The original or annual renewal fee for the Weekly Fire Pump Test Certificate shall be:	\$150.00	
(d)	Service fee for a returned or dishonored check pursuant to Government Code, Section 6157(b)	\$30.00	
(e)	Late Fee	50% of application fee	

§ 925.1 Fee Schedule

Fees for application or renewal of any certification or registration issued pursuant to this Chapter shall be as follows:

(1)	Sprinkler Fitter Certification	\$150
(2)	Apprentice Registration	\$150
(3)	Trainee Registration	\$150
(4)	Annual Renewal	\$150
(5)	Replacement Certification or Registration Identification Card	\$25
(6)	Commercial Continuing Education Unit Course Registration	\$150
(7)	Multi-family Residential Continuing Education Unit Course Registration	\$150
(8)	Late Fee (50% of application fee)	
(9)	Service fee for a returned or dishonored check pursuant to Government Code, Section 6157(b)	\$30

Evidence Supporting Finding of No Significant Adverse Economic Impact on Any Business

The OSFM has initially determined that the proposed regulations will not have a significant adverse economic impact on business. The OSFM’s Advisory Committee discussed and considered these changes. The Committee members indicated these changes would not have a significant adverse economic impact on business enterprise or individuals.

The proposed regulation will incur some effect on the regulated community, but those impacts will be absorbed by industry and businesses engaged with industry.

Based on those facts and evidence, the OSFM has determined these changes would not have a significant adverse economic impact.

The Creation or Elimination of Jobs within the State of California

The proposed regulations are not expected to have a significant impact on the creation or elimination of jobs within the State of California.

The Creation of New Businesses or the Elimination of Existing Businesses

It is anticipated that the proposed regulations will not significantly impact the creation or elimination of businesses in California.

The Expansion of Businesses Currently Doing Business within the State of California

It is unlikely that the proposed regulation will encourage or discourage regulated businesses from expanding their business in California.

Benefits of the Regulations to the Public Safety and Worker Safety

The OSFM has determined that this regulatory proposal will benefit public safety, and worker safety. This program specifically enhances worker safety by reducing the risk of catastrophic fire in structures with automatic extinguishing devices. This regulation enhances the use of preventative measures to reduce the risk of a fire ignition or spread in many public structures, protecting workers and public visitors from the impacts of fire and panic.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY OR REPORT

In developing these proposed regulations, the OSFM researched the program's operational costs, historical fee structure, and statutory fund requirements. The OSFM also consulted with and received input from the OSFM Automatic Extinguishing Systems Advisory Committee. These were conversations only, and there were no documents relied upon in connection with these consultations.

As part of the regulation's development process, draft fee amounts were presented to the OSFM Automatic Extinguishing Systems Advisory Committee and the State Board of Fire Services for consideration. These stakeholders agreed by consensus that while these amendments to the regulations would increase costs to directly affected industries, the proposed amendments would not fundamentally change their business operations or represent an undue cost burden against the profitability their businesses.

The OSFM Automatic Extinguishing Systems Advisory Committee operates under a charter with the OSFM. The committee is comprised of representatives of local fire departments, the regulated industry community, laboratory representatives, and Program staff. Many committee members would be legally required to comply with the new regulations and are therefore directly impacted by amendments to the current regulations. Committee members are appointed by the State Fire Marshal. This item appeared on the October 28, 2020, meeting agenda. Program staff provided a verbal presentation during the Board meeting, which is memorialized in the meeting minutes.

As required by Health and Safety Code Section 13126, the OSFM also sought the advice of the State Board of Fire Services on the proposed amendments. The State Board is a statutorily required advisory board to the State Fire Marshal. The State Board is comprised of representatives from fire service labor, fire chiefs, fire districts, volunteer firefighters, local government, the Office of Emergency Services, and the insurance industry. Members are appointed by the Governor or selected by relevant professional organizations or agencies. This item appeared on the August 19, 2021 agenda. Program staff provided a verbal presentation during the Board meeting, which is memorialized in the meeting minutes.

Documents Relied Upon:

In addition to the sources noted above, the OSFM relied on the following technical, theoretical, and/or empirical studies, reports, and laws in developing the proposed regulations:

- Department of Finance Fund: 0102 - California Manual of State Funds (Revised June 2011)
- Automatic Extinguishing Systems Advisory Committee Meeting Agenda, October 28, 2020
- State Board of Fire Services Meeting Agenda, August 19, 2021

Documents Incorporated by Reference:

No documents are incorporated by reference as part of this proposal.

CONSIDERATION OF REASONABLE ALTERNATIVES AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The OSFM has reviewed the proposed regulatory action, including both the positive and negative impacts it will place upon the industry. However, none of the alternatives would be more effective in carrying out the purpose of the legislation and proposed regulations or be less burdensome to the affected parties than the proposed regulations.

The alternative considered would not generate sufficient revenue to operate the program. The result of the reasonable alternative would be inconsistent with the requirements of Health and Safety Code Section 13137, the State Fire Marshal Licensing and Certification Fund.

The alternative of no regulatory action would also not be in the best interest of the public because a funding deficit would impact the operational stability of the program, which would cause a negative impact to directly affect businesses and impair the public safety benefits of the program.

The OSFM invites and will consider all public comments on alternatives to any of the proposed regulations

Alternative 1: Two-Stage Increase in Fees

The OSFM considered implementing the fee increase in two stages, starting with an increase of half of the fee amount and then implementing the full fee increase the following fiscal year. However, this alternative would not create sufficient revenue to meet the operating expenses of the Automatic Extinguishing Systems Program operating expenses.

Alternative 2: No Action The OSFM considered the alternative of taking no action to raise fees. However, this alternative would generate no additional revenue.

SMALL BUSINESS DETERMINATION

The OSFM has determined that the proposed regulations have no "substantial" effect to small business and the OSFM has not identified any alternatives that would lessen any adverse impact on small business and still allow the OSFM to remain in compliance with statutory requirements for the State Fire Marshal Licensing and Certification Fund.

The public safety requirements of this program do not require disclosure of business details which would identify a “small business,” as it is defined by Government Code 11342.610. While businesses may self-identify as part of their public participation in the regulatory process, this data is not generally provided to the OSFM.

Alternative: Small Business

The OSFM also considered the two-stage fee increase as an option which may lessen the cost burden to small businesses, as defined. However, various stakeholders provided feedback as part of the regulation’s preliminary activities, confirming that the increased cost would be absorbable within their business model. Therefore, a two-stage fee increase would not substantially reduce the cost burden to business and also would not generate sufficient revenue to allow the program to be consistent with Health and Safety Code Section 13137, the State Fire Marshal Licensing and Certification Fund. It was ultimately determined that no reasonable alternative would be equally effective and less burdensome than the proposed regulations.

Does the Proposed Regulatory Action Mandate the Use of Specific Technologies or Equipment, or Prescribe Specific Actions or Procedures?

No.

Conflict or Duplication with Federal Law

The OSFM has determined this proposed regulatory action neither conflicts with nor duplicates any federal regulations contained in the Code of Federal Regulations.

Specific Sections of Text Which Have Been Modified

Section 905.03.

This section has been amended to include the words “original and renewal” to identify fees for the Primary Location and Additional Location. This is a non-substantive amendment and is not a change in policy from the existing regulations. The problem is that the chart has multiple columns and potential options. While the text of the regulations lists the fees in the chart to be for both original and renewal fees for licenses, the chart includes multiple service options and does not specify that the costs listed are identical for original and renewal fees. The purpose is to clarify that both new applications and the annual renewal of existing licenses are charged the same fee, as listed in existing regulations. The rationale is that original and renewal fees are often different, and it would be reasonable for a licensee to confirm the cost before renewing their license.

This section has also been amended to increase the fees for all license types. The purpose of the fee increase is to meet the requirements of the State Fire Marshal Licensing and Certification fund, which requires that 1) fees may not exceed the actual cost of administrating the OSFM’s Licensing and Certification programs, and 2) fees must be used for the benefit of the same group they are collected from. The problem is that the current fee amounts are insufficient to operate the program without incurring a deficit. The rationale is that the program has no other sources of revenue aside from fees, so an increase in fees is required to increase revenue. The fee increases are as follows: Type 1 and Type 2: \$250 increase from \$500 to \$750, Type L: \$215 increase from \$135 to \$350, Type L with State

Inspection: \$265 increase from \$335 to \$600. Type L second or subsequent inspections: \$100 increase from \$200 to \$300; all additional location services are increased by \$200 from \$100 to \$300.

The third amendment to this section adds the fee amount for a (b) second and each subsequent inspection. This is a non-substantive amendment and is not a change in policy from the existing regulations. This change will clarify in the regulations text by showing that the second or subsequent inspections at an additional location has the same cost as the other fees for an additional location.

The fourth amendment to this section adds to regulations a \$30 service fee for a returned or dishonored check. The purpose of this fee is to cover banking charges assessed to the department as well as the administrative costs associated with recovery efforts. The problem is that this fee is not clearly listed with the other fees for this program. The rationale is that the OSFM authorized by statute to recover costs for invalid payment by to State agencies by Government Code Section 6157 (b).

The Note for authority the cited for this regulation has also been amended to include Government Code Section 6157, in order to accurately list the statutes which are implemented by this regulation.

Section 925.1.

The amendment to this section adds to regulations a \$30 service fee for a returned or dishonored check. The purpose of this fee is to cover banking charges assessed to the department as well as the administrative costs associated with recovery efforts. The problem is that this fee is not clearly listed with the other fees for this program. The rationale is that the OSFM authorized by statute to recover costs for invalid payment by to State agencies by Government Code Section 6157 (b).

The Note for authority the cited for this regulation has also been amended to include Government Code Section 6157, in order to accurately list the statutes which are implemented by this regulation.